

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROLANDO RUIZ,
TDCJ No. 999145

Petitioner,

-VS-

CIVIL NO. SA-03-CA-303-OG

DEATH PENALTY CASE

RICK THALER, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

PETITIONER ROLANDO RUIZ'S ADVISORY TO THE COURT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE ORLANDO GARCIA:

Petitioner Rolando Ruiz files this advisory in response to this Court's November 22, 2010 order. In that order, the Court asked parties to advise it of any additional witnesses they wish to call to testify at the evidentiary hearing set for January 4, 2011. *See Order Striking Hearsay Testimony From Dr. Silverman and Setting Date for Remainder of Evidentiary Hearing, Docket Entry 141 at 17.* This Court also asked parties to advise it of any additional exhibits to be offered into evidence. *Id.*

Counsel for Mr. Ruiz does not wish to call any additional witnesses. Further, Mr. Ruiz is willing to waive closing arguments, and proceed to post-hearing briefing. Undersigned Counsel has conferred with opposing counsel, Jeremy Greenwell who indicated Director Thaler does not wish to cross-examine Dr. Seth Silverman. Mr. Greenwell also indicated that Director Thaler does not wish to call any additional witnesses in this case, and is also willing to waive closing arguments and proceed to post-hearing briefing.

Petitioner Rolando Ruiz wishes to offer into evidence the curriculum vitae of Dr. Seth Silverman, to which opposing counsel already stipulated during the evidentiary hearing.

Further Petitioner Rolando Ruiz wishes this Court admit as evidence, or take judicial notice of, the exhibits initially listed in Petitioner's October 1, 2010 Notice of Filing of Hearing Exhibits not yet admitted into evidence. *See* Petitioner's Notice of Filing of Hearing Exhibits, Docket Entry 117. These exhibits include the NLADA Standards and articles from The Champion.

Petitioner Rolando Ruiz also plans to offer into evidence an additional affidavit of Dorotea Sanchez, in lieu of conducting a video deposition. Parties were unable to conduct a video deposition of Ms. Sanchez after her condition recently worsened as a result of her illness. Because it is unclear when, or if, Mrs. Sanchez's health will improve, it will be necessary to present her testimony in an affidavit. Counsel for Mr. Ruiz hopes to obtain this affidavit and proffer it to the Court as soon as Mrs. Sanchez's health allows. Counsel for Mr. Ruiz understands Director Thaler may object to Mrs. Sanchez's affidavit.

In Summary, Petitioner plans to offer into evidence the following exhibits:

Petitioner's Exh. 20 – NLADA Standards for the Performance of Counsel in Death Penalty Cases (1988);

Petitioner's Exh. 21 – Kevin McNally, *Death is Different: Your Approach to a Capital Case Must Be Different Too*; THE CHAMPION 8 (NACDL, March 1984);

Petitioner's Exh. 22 – Bill Redick & Henry Martin, *The Right to Experts in Capital Cases: The Implications of Ake v. Oklahoma*, THE CHAMPION 6 (NACDL, June 1985);

Petitioner's Exh. 23 - Jeff Blum, *Investigation in a Capital Case: Telling the Client's Story*, THE CHAMPION 27 (NACDL, August 1985);

Petitioner's Exh. 24 - David Stebbins & Scott Kenny, *Capital Cases: Zen and the Art of Mitigation Presentation, or, The Use of Psycho-Social Experts in the Penalty Phase of a Capital Trial*, THE CHAMPION 14 (NACDL, August 1986);

Petitioner's Exh. 25 - James Hudson, Jane Core & Susan Schorr, *Capital Cases: Using the Mitigation Specialist and the Team Approach*, THE CHAMPION 33 (NACDL, June 1987);

Petitioner's Exh. 26 - David Stebbins, *Capital Cases: Psychologists and Mitigation: Diagnosis to Explanation*, THE CHAMPION 34 (NACDL, April 1988);

Petitioner's Exh. 27 - Edward C. Monahan, *Obtaining Funds for Experts in Indigent Cases*, The Champion 10 (NACDL, August 1989);

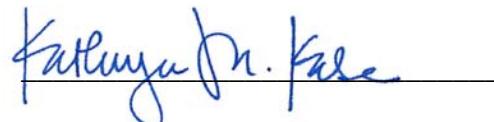
Petitioner's Exh. 29 - Curriculum Vitae of Dr. Seth Silverman

Petitioner's Exh. 30 - Second Affidavit of Dorotea Sanchez

As neither party plans to examine any additional witnesses or deliver closing arguments, Petitioner Rolando Ruiz respectfully requests this Court conclude the evidentiary hearing in this case.

Dated: December 2, 2010
Houston, TX

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kathryn M. Fale", is placed over a horizontal line.

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CERTIFICATE OF SERVICE

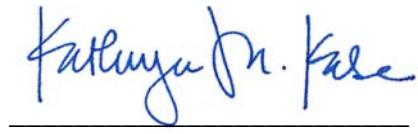
On December 2, 2010, I electronically filed the foregoing pleading with the clerk of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. A "Notice of Electronic Filing" was sent to Jeremy Greenwell, attorney of record for Respondent Thaler, at his e-mail address: jeremy.greenwell@oag.state.tx.us.



Kathryn M. Kase

CERTIFICATE OF CONFERENCE

On December 2, 2010, I spoke with counsel for Respondent, Jeremy Greenwell regarding the contents of this advisory and he indicated he was not opposed.



Kathryn M. Kase